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AND LONGS DRUG STORE CORPORATION

n/k/a LONGS DRUG STORES, L.L.C.

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

SKILSTAF, INC., on behalf of itself and  
all others similarly situated,

Plaintiff,

v.

CVS CAREMARK CORP.; LONGS  
DRUG STORE CORPORATION; THE  
KROGER CO.; NEW ALBERTSON'S,  
INC.; RITE AID CORPORATION;  
SAFEWAY, INC.; SUPERVALU, INC.;  
WALGREEN CO.; and WAL-MART  
STORES, INC.,

Defendants.

Case No: CV 09 2514 SI

**RESPONSE TO PLAINTIFF'S  
REQUEST FOR JUDICIAL NOTICE**

**DATE: JANUARY 15, 2010**

**TIME: 9:00 A.M.**

**COURTROOM 10**

HONORABLE SUSAN ILLSTON

COMPLAINT FILED: JUNE 5, 2009

Defendants CVS Caremark Corp. (“CVS Caremark”), Longs Drug Stores Corporation n/k/a Longs Drug Stores, L.L.C (“Longs”) Supervalu, Inc. (“SuperValu”), New Albertson’s, Inc. (“New Albertson’s”), Safeway, Inc. (“Safeway”), Wal-Mart Stores, Inc. (“Wal-Mart”), Walgreen Co. (“Walgreens”), Rite Aid, Inc. (“Rite Aid”), and The Kroger Co. (“Kroger”), (collectively “Defendants”), hereby respectfully respond to Plaintiff Skilstaf, Inc.’s (“Skilstaf”) Request For Judicial Notice pursuant to Federal Rule of Evidence 201:

Federal Rule of Evidence 201 provides that, upon request, a court may take judicial notice of facts “capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned.” Fed. R. Evid. 201. Accordingly, a court may take judicial notice of the records and files of state and federal courts. *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 (9<sup>th</sup> Cir. 2006) (court may take judicial notice of court filings and other matters of public record); *Disabled Rights Action Comm. V. Las Vegas Events, Inc.*, 375 F.3d 861, 866 n.1 (9<sup>th</sup> Cir. 2004) (court may take judicial notice of the records of state agencies and other undisputed matters of public record); *see also Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9<sup>th</sup> Cir. 2001) (“under Fed. R. Evid. 201, a court may take judicial notice of ‘matters of public record’”) (quoting *Mack v. South Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9<sup>th</sup> Cir. 1986)); *Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank*, 136 F.3d 1360, 1364 (9<sup>th</sup> Cir. 1998) (taking judicial notice of pleadings filed in different action by one of the parties); *Piper v. RGIS Inventory Specialists, Inc.*, No. C-07-00032, 2007 WL 1690887, at \*1 n.1 (N.D. Cal. June 11, 2007) (taking judicial notice of pleadings in two cases filed in another district court).

Defendants, therefore, do not oppose Skilstaf’s Request For Judicial Notice to the extent that the court may take notice of the existence of the documents and their contents, and that Documents 2, 3, 4, 5, 7, 8 and 9 listed in Skilstaf’s request were presented to the court in *New England Carpenters et al. v. First DataBank*,

1 Case No. 05-11148 PBS (D. Mass.) (“*New England Carpenters*”) or were issued  
2 by that court, as in the case of Documents 1 and 6 listed in Skilstaf’s request.  
3 Defendants, however, do not concede that the facts stated therein are true and  
4 correct or that the documents or facts stated therein are admissible for all purposes.

5 Respectfully Submitted,

6 Dated: December 18, 2009 FOLEY & LARDNER LLP

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19 N/K/A Longs Drug Stores, L.L.C.

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13 Dated: December 18, 2009

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GENERAL ORDER 45 CERTIFICATION

I, Page R Barnes, hereby attest pursuant to N.D. Cal. General Order No. 45 that the concurrence to the filing of this document has been obtained from each signatory.

Dated: December 18, 2009 FOLEY & LARDNER LLP

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